TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1050.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

CLEMENT HUGH HILL AND WILLIAM G. RUSSELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED SEPTEMBER 19, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1050.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

CLEMENT HUGH HILL AND WILLIAM G. RUSSELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of error	1	1
Return on writ of error	2	1
Caption	3	1
Declaration	4	2
Exhibit A. Bond and appointment	4	2
Answer	6	3
Issue joined	7	4
Verdict	7	4
Motion and consent to amend writ	7	4
Judgment	8	4
Bill of exceptions	8	4
Record of former case between same parties	12	6
Caption	12	7
Declaration	12	7
Exhibit A. Bond and appointment	12	7
Answer	13	8
Agreed statement of facts	14	9
Copy of judge's certificate to accounts	15	10
Blank used for report of clerk's fees, &c	15	10
Blank used in naturalization of aliens	17	12
Judgment	18	13
Exceptions	19	13
Assignment of errors	19	14
Clerk's certificate	21	15
Citation and proof of service of same	22	15

1 UNITED STATES OF AMERICA, ss:

The President of the United States, to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States of America, plaintiff, and Clement Hugh Hill and William G. Russell, both of Boston, in said district, defendants, in an action of contract, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

ALEX. H. TROWBRIDGE,
Deputy Clerk of the Circuit Court of the United States, District of Massachusetts.

Allowed by—

THOMAS L. NELSON,
Dist. Judge.

2 CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

And now, here, the judges of the circuit court of the United States in and for the district of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court this tenth day of September, A. D. 1887.

JOHN G. STETSON,
Clerk.

(Indorsed in pencil:) Writ of error.

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday,

the sixteenth day of May, in the year of our Lord one thousand eight hundred and eighty-seven, the fifteenth day of said May happening on a Sunday, before the honorable LeBaron B. Colt, circuit judge.

UNITED STATES OF AMERICA, PLAINTIFFS
v.
CLEMENT HUGH HILL AND WILLIAM G. RUSSELL, both of Boston, in the district of Massachusetts, defendants.
No. 2838. In an action of contract.

To the damage of the said plaintiffs, as they say, the sum of two thousand dollars.

The writ in this cause is dated April 29, 1887, and is duly entered at the present May term of this court, A. D. 1887, when and where the parties appear by their respective attorneys, and the following pleadings are filed:

4 *Declaration.—Filed June* 8, 1887.

And the plaintiffs say that the defendant, Hill, heretofore, to wit, on the 5th day of February, A. D. 1879, was duly and lawfully appointed clerk of the district court of the United States for the district of Massachusetts, and accepted said appointment, and has held the position of clerk of said court ever since and until the date of the writ in this action, and that on the 5th day of February, A. D. 1879, the defendants jointly and severally executed a bond to the plaintiffs, a copy whereof is hereto annexed, marked "A;" and the plaintiffs say the said Hill has not properly accounted for all moneys coming into his hands, as required by law, according to the condition of said bond.

GEO. M. STEARNS,
U. S. Attorney for the Plaintiffs.

Annexed copy of bond.

A.

Know all men by these presents:

That we, Clement Hugh Hill, John Plummer Healey, and Wm. Goodwin Russell, all of the city of Boston, in the Commonwealth of Massachusetts, are held and firmly bound unto the United States of America, in the sum of twenty thousand dollars, lawful money of the said United States, to be paid to the said United States; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this 5th day of Feb., 1879.

5 The condition of the above obligation is such, whereas, pursuant to law, the said Clement Hugh Hill has been appointed clerk of the district court of the United States for the district of Massachusetts, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, as by an appointment to

him bearing date the fifth day of February, 1879, more fully appears, a certified copy of which is hereunto annexed:

Now, if the said Clement Hugh Hill, by himself and by his deputies, shall faithfully discharge the duties of his office, and seasonably record the decrees, judgments, and determinations of the said court, and properly account for all moneys coming into his hands, as required by law, then this obligation to be void; otherwise to remain in full force and virtue.

CLEMENT HUGH HILL. [SEAL.]
JOHN PLUMMER HEALY. [SEAL.]
WM. GOODWIN RUSSELL. [SEAL.]

Signed, sealed, & delivered in presence of—
GEO. WASHINGTON MORSE, to C. H. H. & J. P. H.
G. W. PATTERSON, to C. H. H. & W. G. R.
FISHER AMES, to all.

Certified copy of original appointment.

UNITED STATES OF AMERICA,
District of Massachusetts:

DISTRICT COURT OF THE UNITED STATES,
February 5th, 1879.

Ordered, That Clement Hugh Hill be, and he hereby is, appointed clerk of the district court of the United States for the district of Massachusetts, his appointment to take effect on this day.

THOMAS L. NELSON,
Judge of the United States, for Massachusetts District.

6 I, Elisha Bassett, deputy clerk of the district court of the United States for the district of Massachusetts, hereby certify that the foregoing is a true copy of the original appointment on file and of record in said court.

In witness whereof I have hereto subscribed my name and affixed the seal of said court this seventh day of February, A. D. 1879.

[SEAL.] ELISHA BASSETT,
Deputy Clerk.

Defendants' Answer.—Filed June 9, 1887.

And now come the defendants and admit that they executed the bond annexed to the plaintiffs' declaration, and that the defendant Hill accepted the office of clerk of the district court under said bond, and has held the same as set forth in the declaration, but they deny that the defendant Hill has committed any breach of the condition of said bond, but contend that he has regularly and faithfully accounted for all moneys received by him as clerk aforesaid, as required by the statutes of the United States. But the defendants admit that he has not accounted for certain moneys received by him for services in connection with the naturalization of foreigners since July 1st, 1884, which moneys, the defendants contend that the said Hill is not required by law to account therefor as part of the fees and emoluments of his office.

And the defendants say that they owe the United States nothing under said bond, but have fully performed the condition thereof.

By their attorney, JOHN LOWELL.

7 Issue being thus joined, this cause, after a full hearing, the honorable Thomas L. Nelson, district judge, sitting, is committed to a jury sworn according to law to try the issue, who, after hearing all matters and things concerning the same, return their verdict therein as follows:

Verdict.—July 26, 1887.

The jury find for the defendants.

AUGUSTUS E. BACON,
Foreman.

On the third day of August, A. D. 1887, the following motion is filed.

Motion to amend writ.—Filed August 3, 1887.

The plaintiffs in the above-entitled cause move to amend their writ by increasing the ad damnum thereof to twenty thousand dollars, so that the same shall read "twenty thousand dollars" instead of "two thousand dollars."

By their attorney, GEO. M. STEARNS.

The defendants consent to the above amendment.

JOHN LOWELL,
For the Defendants.

8 On the twenty-fourth day of August, A. D. 1887, the honorable Thomas L. Nelson, district judge, sitting, the aforesaid motion to amend writ is allowed as of June 26, 1887, the day of the trial herein, the bill of exceptions presented by the plaintiffs is allowed and judgment is entered as follows:

Judgment.—August 24, 1887.

And now, to wit, Aug. 24, 1887, it is considered by the court that the said plaintiffs take nothing by their said writ.

A true record.

Attest:

JOHN G. STETSON.
Clerk.

The following is the bill of exceptions presented by the plaintiffs and allowed by the court before entry of judgment:

Plaintiffs' exceptions.—Allowed August 24, 1887.

This is an action upon the official bond of the defendants, given by the defendant Hill as clerk of the district court for this district. The pleadings are made a part of this bill of exceptions and may be referred to. The

only breach of the bond relied upon was that set out in the declaration of the failure of Hill to account for all moneys received; and, under this assignment of breach, no claim was made that the said Hill had neglected to account for any other sums or moneys than those received by him in naturalization cases. It appeared as a fact that the total amount of naturalization fees received by the defendant Hill since the date of
9 former suit, viz, December 4, 1884, and not accounted for, was as follows:

July to Dec., 1884	$2,720 58
1885	1,146 50
1886	2,325 00
Jan. to June, 1887	838 00

It also appeared that in 1884, adding the naturalization fees to the other fees, the two together exceeded the clerk's maximum allowance by the amount of $517.07, but since then, adding the two together, the clerk has not received the maximum allowed him by law.

At the trial before a jury the United States attorney offered to prove, in addition to the facts admitted by the pleadings, that since December, A. D. 1884 (the date of the former suit between these parties, in which the right of the plaintiffs to recover fees received by said Hill in naturalization cases was involved and which was decided by the Supreme Court January 31, 1887), the said Hill had received large sums of money as the ordinary and usual fees upon the application of foreigners to be naturalized in the district court of which he was clerk, and for the issuance of certificates of naturalization and for the filing of papers and administration of oaths, and for the other official acts required by law in the naturalization in due manner of foreigners. That the said Hill, in the proceedings aforesaid, used the official seal of the court, administered the oaths as clerk of said court, filed the papers as such, and performed all the acts necessary to make legal and effective such naturalization as such clerk, and that the fees received by said Hill in naturalization cases were so received by him in the usual and ordinary performance of his duties as clerk, in his official character and with the use of means supplied by the United States. That, in nearly all the districts of the United States, the clerks of the district court, and, in the circuits, the clerks of the circuit courts, have always included fees received by them in naturalization cases in their accounts
10 rendered to the plaintiffs; that the Secretary of the Interior always, when the matter was brought to his attention, insisted upon said clerks so doing as long as such judiciary accounts were under his official control; that, since such accounts were transferred to the Department of Justice, similar accounts were audited there by the same clerk who audited them in the Department of the Interior; that, without any instance of omission on the part of either Department, fees received by the clerks of the district and circuit courts in naturalization cases have been claimed as belonging to the plaintiffs, and return thereof and an account therefor have been required and that, if in any returns of such clerks such fees have been omitted, their official return has been demanded when such omission has been known to said Departments. That the omission of the said Hill and his predecessor to make returns of and account for said fees was unknown to the said Departments, the returns being in form annexed hereto and made part of this bill of

exceptions, and the Departments examining and allowing said accounts believed the same to contain all fees received by them in naturalization cases, and that the Departments passing upon these accounts were not aware of said omissions until an examiner of the Department of Justice reported thereon in October, A. D. 1884. That this district court has approved the emolument returns of the defendant Hill, who included therein no fees earned in naturalization cases, and the circuit court has approved the emolument account and return of Circuit Clerk Stetson, who included one-half of such fees, retaining the other half to himself. The attorney for the United States stated that he claimed that the fees received by said Hill in naturalization cases were those specifically provided for by statute for like acts done by the clerk in all cases; that he did not claim to recover for any sums received for services and acts which any unofficial person might do for the court, but for those sums received for acts done as clerk of the district court, which make the history of the case upon the records of the court, and which cannot legally be performed by any other than a clerk of a United States court and which are done in that capacity.

11 The counsel for the defendants asked the United States attorney if he expected to prove that the fees sought to be recovered in this case accrued or were received by defendant Hill under any different mode of conducting naturalization cases than existed when former fees had been received. The attorney answered he did not. The record in the former case between the parties, and heretofore herein referred to, was put in the case, and is made part of this bill. The court, thereupon, at the request of the defendants, ruled that all the aforesaid evidence was immaterial, that, assuming all that was offered to be put in evidence to be true, the plaintiffs could not recover; that fees received by the defendant Hill in naturalization cases were not sums of money or items which he was required by law to return or account for to the plaintiffs, and that the defendants were entitled to a verdict. To which rulings and each and all of them the plaintiffs then and there excepted. The court then directed a verdict for the defendants, to which the plaintiffs then and there excepted.

UNITED STATES.
By their attorney GEO. M. STEARNS.

The foregoing exceptions are allowed.

THOMAS L. NELSON,
District Judge.

12 *Record of former case between the parties made part of bill of exceptions.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and eighty-five, before the honorable Le Baron B. Colt, circuit judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
v.
CLEMENT HUGH HILL AND WILLIAM G. RUSSELL, both of Boston, in the district of Massachusetts, defendants.
} In an action of contract.

To the damage of the said United States, as they say, the sum of twenty-two thousand dollars.

The writ in this cause is dated Dec. 4, 1884.

Declaration.—Filed May 15, 1885.

And the plaintiffs say that heretofore, to wit, on the thirteenth day of November, A. D. 1874, the defendant Clement Hugh Hill was duly and lawfully appointed clerk of the district court of the United States for the district of Massachusetts, and accepted said appointment, and has held the position of clerk of said court from the time of said appointment until the date of the writ; and that heretofore, to wit, on the thirty-first day of March, A. D. 1875, the defendants jointly and severally executed a bond to the plaintiff, a copy whereof is hereto annexed, marked A, and the plaintiffs say that the said Hill has not properly accounted for all moneys coming into his hands as required by law according to the condition of said bond.

GEORGE P. SANGER,
U. S. Att'y, Plaintiffs' Attorney.

Annexed copy of bond.

A.

Know all men by these presents that we, Clement Hugh Hill, John Plummer Healy, and William Goodwin Russell, all of the city of Boston, in the Commonwealth of Massachusetts, are held and firmly bound unto the United States of America, in the sum of twenty thousand dollars, lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed with our hands and sealed with our seals this fifth day of February, 1879.

The condition of the above obligation is such whereas pursuant to law the said Clement Hugh Hill has been appointed clerk of the district court of the United States for the district of Massachusetts, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, as by an appointment to him bearing date the fifth day of February, 1879, more fully appears, a certified copy of which is hereunto annexed.

Now, if the said Clement Hugh Hill, by himself and by his deputies, shall faithfully discharge the duties of his office, and seasonably record the decrees, judgments, and determinations of the said court, and properly account for all moneys coming into his hands, as required by

law, then this obligation to be void; otherwise to remain in full force and virtue.

CLEMENT HUGH HILL. [SEAL.]
JOHN PLUMMER HEALY. [SEAL.]
WILLIAM GOODWIN RUSSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
GEORGE WASHINGTON MORSE to C. H. H. & J. P. H.
G. W. PATTERSON to C. H. H. & W. G. R.
FISHER AMES to all.

Copy of the original appointment.

UNITED STATES OF AMERICA,
District of Massachusetts:

DISTRICT COURT OF THE UNITED STATES,
February 5th, 1879.

Ordered, That Clement Hugh Hill be, and he hereby is, appointed clerk of the district court of the United States for the district of Massachusetts, his appointment to take effect on this day.

THOMAS L. NELSON,
Judge of the United States for Massachusetts District.

I, Elisha Bassett, deputy clerk of the district court of the United States for the district of Massachusetts, hereby certify that the foregoing is a true copy of the original appointment on file and of record in said court.

In witness whereof I have hereto subscribed my name and affixed the seal of said court, this seventh day of February, A. D. 1879.

[SEAL.] ELISHA BASSETT,
Deputy Clerk.

On the ninth day of June the following answer was filed:

Answer.—Filed June 9, 1885.

And now come the defendants and admit that said Hill was duly and lawfully appointed clerk of the district court of the United States for the district of Massachusetts, and accepted said appointment, and has held the office of clerk of said court during the time alleged in said declaration; and they admit that the defendants executed the bond annexed to said declaration in manner and form as therein alleged; but the defendants deny that said Hill has not properly accounted for all moneys coming into his hands, as required by law, and they declare and allege that said Hill has made full and sufficient returns of all moneys received by him, as required by law, and that he owes no sum of money to the said United States; and the defendants allege that there has been no breach of the condition of said bond; but that they have fully performed everything undertaken by them therein.

JOHN LOWELL,
Of Counsel.

14 On the first day of July the following agreed statement of facts was filed:

Circuit court of the United States, district of Massachusetts. No. 2473, Law docket. May term, 1885.

UNITED STATES
v.
CLEMENT H. HILL ET AL.

Agreed statement of facts.—Filed July 1, 1885.

This is an action of contract upon the bond given by the defendant Hill, as clerk of the United States district court for the district of Massachusetts, and is submitted to the decision of the court on the following facts, so far as they are competent and material evidence, which are hereby made part of the record:

The defendant Hill was appointed clerk of said court on the fifth day of February, 1879, and duly qualified as clerk, and the defendants gave the bond, a copy of which is annexed to the declaration. As clerk he has made half-yearly returns of fees and emoluments received by him, but he has not included in the same the amounts received by him for the naturalization of aliens in the district court.

It has been the custom in the United States courts in the district of Massachusetts for a long time, not less than forty-five years before the date of the writ in the present action, and known and approved by the judges, for the clerk to charge one dollar as a fee for a declaration of intention to become a citizen, and two dollars as a fee for a final naturalization and certificate thereof; and the clerk of the district court has never included these in the fees and emoluments returned by him, and this has been known to the judges to whom the accounts have been semi-annually exhibited, and by whom they were passed without objection in this particular. Following this custom, and believing and being informed that these fees formed no part of the emoluments to be returned to the Government, the defendant Hill has not included these amounts in his accounts, and this was known to the judge when his accounts were examined, and he made on each a certificate in the form hereto annexed; and his accounts so made out up to July 1, 1884, have been examined and adjusted by the accounting officers of the Treasury Department.

The clerks of the several courts of the State of Massachusetts made similar charges for like services, and made no returns to the treasurers of the counties of the fees so received until the passage of the statute of the State of 1879, chap. 300.

If, upon the facts before stated and agreed, the court shall be of opinion that the said fees charged by the defendant Hill, in respect to naturalizations, or any part thereof, should have been returned in his accounts to the United States as part of the emoluments of the clerk, from which his compensation is to be taken, in accordance with sect. 833 of the Revised Statutes, and that the settlements and adjustments of his several accounts, as above mentioned, constitute no defence to this action, the case shall be sent to an assessor, to ascertain the amount due the United States, in ac-

cordance with the law as laid down by the court, unless the parties
15 shall, within fifteen days after the announcement of the opinion of the court, agree upon the amount.

The blanks used for the report of clerks' fees and emoluments, and the blanks used in naturalization of aliens, may be considered as part of the record of the case.

The instructions of the Department of Justice to the several clerks, dated January, 1879, may be read for any purpose for which it is properly applicable; but neither the defendant Hill nor his deputy, Mr. Bassett, have any recollections of receiving or seeing such a circular before October, 1884.

The court may draw such inferences from the above facts as a jury might.

GEORGE P. SANGER,
U. S. Attorney, for Plaintiffs.
JOHN LOWELL,
For Defendants.

Copy of certificate annexed.

I, , judge of the district court for the district of Massachusetts, do hereby certify that I have carefully examined the vouchers referred to in the foregoing return; that the disbursements charged therein for clerk hire and office expenses were necessary to the convenient transaction of the business of the clerk's office, and that the sums paid therefor are, in my opinion, reasonable.

Blank used for report of clerk's fees and emoluments annexed.

[Blank for emolument return, to be filled up when a return is due, and forwarded to the Attorney-General of the United States, with the necessary vouchers. Should the return be verified before any officer other than a judge or clerk of a court of the United States, the additional certificate of authentication should be appended, as the printed instructions of July 13, 1870, require. Similar blanks will be furnished for each semi-annual return.]

Return of fees and emoluments of , clerk of the court of the United States for the district of , from to , and of moneys paid out by him during the same period for the expenses of his office; also of the receipt or non-receipt of fees and emoluments previously returned by him as "not received."

	Dollars.	Cents.
DISTRICT COURT.		
Fees and emoluments earned from the United States, received		
do. do. do. do. do. not received		
Fees and emoluments earned from individuals, received		
do. do. do. do. not received		
do. do. do. do. in cases in bankruptcy, received		
do. do. do. do. do. do. not received		
Total gross emoluments earned in the district court		
CIRCUIT COURT.		
Fees and emoluments earned from the United States, received		
do. do. do. do. not received		
Fees and emoluments earned from individuals, received		
do. do. do. do. not received		
Total gross emoluments earned in the circuit court		

16 OFFICE EXPENSES PAID OUT OF GROSS EMOLUMENTS, AS AUTHORIZED BY LAW AND REGULATIONS.

	District court.			Circuit court.		
Amount paid for rent of office	Voucher No. 1			Voucher No. 7		
Do. do. furniture for office	do. 2			do. 8		
Do. do. clerk hire	do. 3			do. 9		
Do. do. fuel	do. 4			do. 10		
Do. do. lights	do. 5			do. 11		
Do. do. stationery	do. 6			do. 12		
Total amount of office expenses.		$			$	

RECAPITULATION.

	District court.		Circuit court.	
Total amount of earnings, received and not received, brought down				
Deduct amount paid for necessary office expenses				
Net amount of emoluments earned				
Deduct maximum personal compensation				
Balance due to the United States		$		
Fees and emoluments heretofore returned as "not received" for the half year ending on the day of , 188 , received				
Fees and emoluments heretofore returned as "not received" for the half year ending on the day of , 188 , received				
Fees and emoluments heretofore returned as "not received" for the half year ending on the day of , 188 , received				
Fees and emoluments heretofore returned as "not received" for the half year ending on the day of , 188 , received				

I, , clerk of the court of the United States for the district of , do solemnly swear that the foregoing account is, in all respects, just and true, according to my best knowledge and belief; and that I have neither received, directly or indirectly, nor directly or indirectly agreed to receive, or be paid, for my own or another's benefit, any other money, article, or consideration than therein stated; nor am I entitled to any emoluments for the period therein mentioned other than those therein specified; and that I have taken all reasonable pains to collect from individuals amounts due to the United States for services in my office: So help me God.

Signed and sworn to before me this day of , 188 .

I, , judge of the court for the district of , do hereby certify that I have carefully examined the vouchers referred to in the foregoing return; that the disbursements charged therein for clerk hire and office expenses were necessary to the convenient transaction of the business of the clerk's office; and that the sums paid therefor are, in my opinion, reasonable.

NOTE 1.—No money can be paid from the Treasury to any clerk while his emolument return shall remain in arrear.

NOTE 2.—If the officer making these returns be clerk of both the circuit and district courts, he will separate, or apportion, the vouch-
17 ers for office expenses so as to show as nearly as practicable the amount expended in each court.

Blank used in naturalization of aliens annexed.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

To the honorable the judge of the district court of the United States within and for the district of Massachusetts:

Respectfully represents , of , in said district, by occupation a , an alien, and a free white person; that he was born in on or about the day of , in the year of our Lord eighteen hundred and , and is now about years of age; that he arrived at , in the United States of America, on or about the day of , in the year of our Lord eighteen hundred and , being then a minor under the age of eighteen years; that it then was and still is his bona fide intention to reside in and become a citizen of the United States of America, and to renounce all allegiance and fidelity to every foreign prince, state, potentate, and sovereignty whatsoever; more especially to Victoria, Queen of the United Kingdom of Great Britain and Ireland, whose subject he has heretofore been.

And the said petitioner further represents that he made a primary declaration of his intention to become a citizen of said United States before the honorable court, , or the clerk thereof, on the day of , A. D. 18 .

And the said petitioner further represents that he has ever since his said arrival continued to reside within the jurisdiction of said United States; that he has never borne any hereditary title, or been of any of the orders of nobility; that he is ready to renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to Victoria, Queen, as aforesaid, whose subject he has heretofore been; that he is attached to the principles of the Constitution of the United States of America, and well disposed towards the good order and happiness of the same.

And the said petitioner further represents that he enlisted in the volunteer forces of the armies of the United States, and that he was honorably discharged therefrom on the day of , A. D. 18 .

Wherefore your petitioner pays that he may be admitted to become a citizen of the said United States of America, according to the forms of the statute in such case made and provided.

188 . Sworn to by said petitioner before said court.
Attest:

Clerk.

UNITED STATES OF AMERICA,
Massachusetts District, to wit:

CITY OF BOSTON, , 188 .

We, , both citizens of said United States, severally depose and say that we have known the foregoing petitioner for five years last past, 18 during which time he has resided in said , and that he has resided within the State of Massachusetts one year at least; and has conducted himself and behaved as a man of good moral character, attached to

the principles of the Constitution of the United States and well disposed towards the good order and happiness of the same.

188 . Sworn to by the above-named witnesses before the said court.
Attest:

Clerk.

Oath taken by petitioner.

I, , do solemnly swear that I do absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatsoever—particularly to Victoria, Queen of the United Kingdom of Great Britian and Ireland, whose subject I have heretofore been; and that I will support the Constitution of the United States of America. So help me God.

UNITED STATES OF AMERICA,
District of Massachusetts, to wit:

At a special district court of the United States, holden at said Boston, on the day of , in the year of our Lord, 188 , the said having produced the evidence required by law, took the aforesaid oath and was admitted to become a citizen of the United States of America, and the court ordered that record thereof made accordingly.
Attest:

Clerk.

(Indorsed:) United States district court. Naturalization of

Judgment and exceptions.

This cause thereupon came on to be heard by the court, the honorable Le Baron B. Colt, circuit judge, and the honorable Thomas L. Nelson, district judge, sitting, and was argued by counsel. This cause was thence continued under advisement to this present term, when, on the fourteenth day of November, A. D. 1885, the opinion of the court is announced that, upon the agreed facts in this case, this action cannot be maintained, and the honorable Thomas L. Nelson, district judge, sitting, judgment is thereupon entered as follows:

Judgment.—Nov. 14, 1885.

It is now, to wit, Nov. 14, 1885, considered by the court that the said plaintiffs take nothing by their said writ.

19 The following bill of exceptions is allowed by the court as of November 14, 1885, before entry of judgment:

Plaintiffs' exceptions.

This is an action for money had and received, to recover certain sums of money claimed by the United States to be due them from the defendant,

the clerk of the district court. The pleadings in the case and the agreed statement of facts filed in the case are made part of these exceptions and fully show the nature of the plaintiffs' claim. Upon the agreed statement of facts the circuit court ruled that the plaintiffs could not recover, and the plaintiffs except.

GEORGE M. STEARNS,
U. S. Att'y.

Allowed as of Nov. 14, 1885, before entry of judgment.

LE BARON B. COLT,
Circuit Judge.

A true record.
Attest:

JOHN G. STETSON,
Clerk.

The following assignment of errors is transmitted with the record:

Assignment of errors.—Filed Aug. 27, 1887.

The United States assign the following errors in the above-entitled cause, and pray that the judgment entered therein for the defendants may be reversed.

That the court refused to admit the evidence offered by the plaintiffs and set forth in the bill of exceptions and directed the jury to return a verdict for the defendants, whereas the court should have admitted the evidence offered by the plaintiffs and set forth in the bill of exceptions and should have directed a verdict for the plaintiffs.

That the court ruled that the evidence offered by the plaintiffs and set forth in the bill of exceptions was immaterial and refused to admit the same, whereas the court should have ruled that said evidence was material and should have admitted the same.

That the court ruled that, assuming all that was offered to be put in evidence by the plaintiffs to be true, the plaintiffs could not recover, whereas the court should have ruled that, assuming all that was offered to be put in evidence by the plaintiffs to be true, the plaintiffs could recover.

That the court ruled that fees received by the defendant Hill in naturalization cases were not sums of money or items which he was required by law to return or account for to the plaintiffs, and that the defendants were entitled to a verdict, whereas the court should have ruled that fees received by the defendant Hill in naturalization cases were sums of money or items which he was required by law to return or account for to the plaintiffs, and that the plaintiffs were entitled to a verdict.

That, by the record in the said cause, it appears that judgment was given for the defendants, whereas, by the law of the land, judgment ought to have been given for the plaintiffs.

GEO. M. STEARNS,
U. S. Attorney.

21 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record in the cause entitled,

UNITED STATES OF AMERICA, PLAINTIFFS,
v.
CLEMENT HUGH HILL ET AL., DEFENDANTS,

Lately determined in said circuit court, and of all proceedings therein, and of the assignment of errors filed therein.

In testimony whereof I hereto set my hand and affix the seal of said circuit court at Boston, in said district, this tenth day of September, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] JOHN G. STETSON, *Clerk.*

22 *Citation and acknowledgment of service thereon.*

The United States of America to Clement Hugh Hill and William G. Russell, both of Boston, in said district, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, within and for the district of Massachusetts, wherein the United States of America is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Thomas L. Nelson, district judge of the United States for the district of Massachusetts, this twenty-third day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

THOMAS L. NELSON,
District Judge.

Due and sufficient service of this citation is acknowledged.

JOHN LOWELL,
Of Counsel for Defendants in Error.

(Indorsement on cover:) No. 1050. The United States—Plaintiff in Error vs. Clement Hugh Hill and William G. Russell. Massachusetts C. C. U. S. Filed September 19, 1887.

123-681

123-681

Office Supreme Court U. S.
FILED
NOV 21 1887
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
CLEMENT HUGH HILL AND WILLIAM G. RUSSELL.
} No. 1050.

ERROR TO CIRCUIT COURT, DISTRICT OF MASSACHUSETTS, ON MOTION TO DISMISS OR AFFIRM.

Brief for the Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
CLEMENT HUGH HILL AND WILLIAM G. RUSSELL.
No. 1050.

ERROR TO CIRCUIT COURT, DISTRICT OF MASSACHUSETTS, ON MOTION TO DISMISS OR AFFIRM.

Brief for the Plaintiffs in Error.

THE MOTION TO DISMISS.

The ground on which this motion rests is that the amount actually in controversy is the sum of $517.07 only.

It appears, by reference to the bill of exceptions (Rec., pp. 5, 6), that the United States made

divers offers of evidence, and that the court, "*at the request of the defendants*, ruled that all the aforesaid evidence [*i. e.*, offers of evidence] was immaterial; that, assuming *all that was offered to be put in evidence to be true*, the plaintiffs could not recover; that fees received by the defendant Hill in naturalization cases were not sums of money or items which he was required by law to return or account for to the plaintiffs, and that the defendants were entitled to the verdict. To which rulings, and each and all of them, the plaintiffs then and there excepted. *The court then directed a verdict for the defendants*, to which the plaintiffs then and there excepted."

It thus appears that not a particle of evidence was heard or produced on the part of the plaintiff, and that the verdict was in obedience to the court's instruction, that in no aspect of the case which the Government tendered itself ready to present could there be a recovery.

It is certainly, then, very remarkable that in this state of things the learned counsel for the defendants in error should claim to find warrant

in the record for the assertion that the amount actually in controversy in this suit is the sum mentioned.

He claims to be supported in this assertion by the bill of exceptions, where will be found the extraordinary statement that "it appeared as a fact that the total amount of naturalization fees received by the defendant Hill since the date of former suit, viz, December 4, 1884, and not accounted for, was as follows:

July to December, 1884	$2,720.58
1885	1,146.50
1886	2,325.00
January to June, 1887	838.00

It also appeared that in 1884, adding the naturalization fees to the other fees, the two together exceeded the clerk's maximum allowance by the amount of $517.07; but since then, adding the two together, the clerk has not received the maximum allowed him by law." (Rec., p. 5.)

Where this statement ends is to be found, no doubt, the beginning of the bill of exceptions tendered by the counsel for the Government, and

it would seem that the statement could not possibly have been prefixed by him. It has no place in the bill, and is *wholly repugnant to all that follows it.*

The first case was tried on a case agreed—prepared, unfortunately, without resorting to important sources of evidence here at the capital—and now this second case, which was intended to settle this controvery *upon the actual facts*, comes up with a bill of exceptions so fashioned as to foreclose the Government without a hearing on the evidence, if it is to be taken as settling the amount in dispute.

It is respectfully insisted that the statement in the bill of exceptions can not be allowed to have any such effect, but that it should be rejected as forming no part of the bill. Even the consent of the counsel for the Government, if it were shown, could not give validity to a statement made so plainly in violation of duty as such a statement would have been. This court has never permitted the interests of the Government to suffer through the laches of its officers, even where sureties are concerned.

The cautious reference to the objectionable statement in the bill of exceptions made in the brief of the defendants in error (p. 3) is certainly not calculated to remove the impressions made by the record.

It will be observed that *it is not stated in the bill that the Government offered any such evidence as the statement contains.* It is impossible to suppose that the counsel for the Government, after unsuccessfully offering evidence to show that Hill had received large sums of money in the way of naturalization fees, consented to place on record the particulars of the testimony thus offered and rejected, when no good purpose could be answered thereby.

We must add that the absence of anything in the record to show that the counsel for the Government objected to the statement in the bill is not a little calculated to excite surprise.

Upon a well-settled principle of practice, the court will not look generally beyond the amount of the damages laid in the declaration or writ, that being to be taken as the amount in contro-

versy. (*Bennett* v. *Butterworth*, 8 How., 129; *Hilton* v. *Dickinson*, 108 U. S., 174.) The damages claimed are $20,000. As the writ stood originally, the damages claimed were $2,000, but, by consent of parties, the writ was amended by putting the damages claimed at $20,000, the amendment to take effect as of 26th June, 1887, the date of the trial. (R., p. 4.)

The small amount of damages laid in the writ was, no doubt, an oversight, and the fact that the amendment was made with the defendants' consent shows plainly that the proceeding was in entirely good faith.

But the law in question here is a *revenue* law, within the meaning of section 699, Revised Statutes, giving appellate jurisdiction to this court "without regard to the sum or value in dispute."

Section 844, Revised Statutes, enacts that—

> Every district attorney, clerk, and marshal shall, at the time of making his half-yearly return to the Attorney-General, pay into the Treasury, or deposit to the credit of the Treasurer, as he may be directed by the Attorney-General, any surplus of the fees

and emoluments of his office which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

Section 833, Revised Statutes, provides as follows:

> Every district attorney, clerk of a district court, clerk of a circuit court, and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk-hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them.

There are other provisions of law touching this subject which it is unnecessary to mention, but which show the vigilance of the Govern-

ment to protect that part of its revenue which flows from the clerks and marshals and district attorneys.

It is not easy to see then how section 844 can be treated in any other light than that of a revenue law in the sense of section 699, which allows a writ of error from this court "in *any* civil action brought by the United States for the enforcement of *any revenue law* thereof." To state the proposition, in view of this language, is alone a convincing argument in favor of jurisdiction.

The Motion to Affirm.

This motion is founded on the judgment of this court in *United States* v. *Hill* (120 U. S., R. 190).

It is not as a bar that the judgment in that suit is set up, because the cause of action in this case is not the same as that involved in the former suit, but it is as an estoppel that the former judgment is relied on as a defense.

It is claimed that the former judgment determined the question of Hill's chargeability under the law for fees received by him in naturaliza-

tion proceedings, and that the Government is precluded by the estoppel of that judgment from again bringing the same subject into question.

The former judgment is based on a case agreed between the United States attorney and the defendants in error.

That case was improvidently made up, and did not set forth all the facts upon which the claim of the Government rests.

The case stated in the bill of exceptions, as involved in the several offers of evidence, presents the question of Mr. Hill's accountability for naturalization fees under new conditions of fact.

But no question of estoppel arises.

It is true that the bill of exceptions shows that the record in the former suit was admitted into the case in some way, but it equally appears that no evidence on the part of the Government was admitted, and therefore the introduction of the record was wholly without authority of law and meaningless, the court having instructed the jury to find for the defendants *in the absence of any testimony whatever for the Government.*

If the Government was to be estopped it was certainly to be allowed to make out its case in full and to have the judgment of the court as to whether the case so made out was covered by the judgment relied on as an estoppel.

It is remarkable that the record shows no objection to the admission of that evidence, but we take leave to say that its presence in the case can work no injury to the United States.

But aside from estoppel, it was the duty of the circuit court to have the *whole* case of the Government before applying the principle of *stare decisis*.

When we consider that the case agreed in the former suit proceeded entirely on the ground of a usage in Massachusetts touching fees in naturalization cases, and that the judgments of this court and the circuit court in that case rested almost wholly on a supposed acquiescence of the accounting officers of the United States, it was manifest error in the court below to deny the Government an opportunity to show the real conditions in which the practice of withholding

naturalization fees was carried on, namely, by showing that there was no such acquiescence by the accounting officers in that practice; that the practice was not known to those officers, and, by the form of emolument returns, which does not particularize the sources of fees and emoluments earned from individuals, was kept concealed from them by the defendant Hill until brought to light in 1884 by an examiner of the Department of Justice.

That whenever the point has been made the Government has always held clerks chargeable with naturalization fees; that the clerks in nearly all the districts of the United States have always included such fees in their returns. (See Bill of Exceptions, Rec., pp. 5, 6.)

The matter of Federal usage in enforcing the law touching clerks' fees was introduced into the first case by this court and the circuit court by a mere presumption.

But that presumption is rebuttable, and this case affords the Government the first opportunity to rebut it. Shall it not be permitted to do so,

by showing that the supposed acquiescence of Government has no existence; on the contrary, that the Government has, whenever the point has been made, always insisted that clerks were chargeable with fees in naturalization cases.

As throwing great light on this subject we take leave to furnish the court with copies of an able and elaborate report of Mr. Hodges, of the Department of Justice, made under the direction of the Attorney-General, in view of the difficulties surrounding the subject of the chargeability of the clerks of Federal courts as to fees received in naturalization proceedings.

But the question of the identity in principle of this suit and the former one will, certainly, not be decided by the court on a motion to affirm. On that point the Government is entitled to be fully heard at the bar of this court.

A. H. GARLAND,
Attorney-General.

WM. A. MAURY,
Assistant Attorney-General.

O

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1050.

UNITED STATES *v.* HILL AND ANOTHER.

BRIEF IN SUPPORT OF MOTION TO DISMISS FOR WANT OF JURISDICTION OR TO AFFIRM JUDGMENT BELOW.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

NO. 1050.

UNITED STATES *v.* CLEMENT HUGH HILL AND ANOTHER.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO DISMISS OR AFFIRM.

And now come the defendants in error in the above-entitled action, and respectfully move that the writ of error therein may be dismissed, because this court has no jurisdiction to revise the judgment of the Circuit Court, for the reason that the amount or value in dispute is less than five thousand dollars.

And the defendants in error further move that if this court has jurisdiction of said action, then the judgment therein may be affirmed without further argument, as the questions involved were fully considered and settled by the case of United States *v.* Hill, between these same parties, decided at the last term of this court (120 U. S. 169), and it is manifest that the writ of error was taken for delay only.

By their attorney,

JOHN LOWELL.

UNITED STATES (*in Error*)

v.

CLEMENT HUGH HILL AND W. G. RUSSELL.

BRIEF FOR DEFENDANTS IN ERROR ON THEIR MOTION TO DISMISS OR AFFIRM.

This is an action against Mr. Hill, as clerk of the District Court for Massachusetts, and against the surviving surety upon his official bond, assigning a failure to account for "naturalization fees."

It is for a precisely similar cause of action to that decided at the last term between the same parties.

U. S. v. *Hill*, 120 U. S. 169.

The record of that case is a part of this case (Record, p. 6), and the declaration, answer and agreed facts of that case are printed in this record, pp. 7 to end. This action begins where the other ended; that is, from July 1, 1884. Upon the authority of that decision, the presiding judge ordered a verdict for the defendants.

I.

This court has no jurisdiction, because the amount in dispute is not sufficient, being only $517.07. As this action does not concern the revenue, and therefore is not within the exception of Rev. Sts. § 699, the amount or value in dispute must exceed $5,000.

Stats. 1875, Ch. 77, § 3; 18 Stats. 316.

The verdict was ordered upon an offer of proof by the

plaintiffs, in which they say that "large sums" were received by Mr. Hill for naturalization. Large sums would not give this court jurisdiction, because the burden of proof is always on the plaintiff in error to show that the sums exceed $5,000.

Hagan v. *Foison*, 10 Pet. 160.
Parker v. *Morrill*, 106 U. S. 1.
New Jersey Zinc Co. v. *Trotter*, 108 U. S. 564.

This question is set at rest by the statement earlier on the same page (5), giving a table of the sums received for naturalization, and adding, that if all these fees and all others were to be returned, the clerk had exceeded his maximum only in the year 1884, and then only by $517.07.

It happens to be thus stated a little out of the natural order, because the offer of proof was drawn up in writing before the trial, and the exact amount was agreed afterwards.

The clerk has a right to retain in his hands, each year, all fees and emoluments received by him during that year not exceeding his maximum.

Rev. Sts. §§ 839, 843.

Therefore, the only damage which the United States have suffered, if they are right in their law, is $517.07.

If this action is governed, in its form and mode of proceeding, by Rev. Sts. § 961, judgment would have been rendered for the United States, if they had prevailed, for $517.07.

If the form of proceeding comes within the law of Massachusetts, judgment would be entered for the penalty, but execution would be awarded for only $517.07.

We submit that the amount in dispute was not the penalty, but the damages which would have been assessed for the breach, if, in law, the breach were made out.

By the law of Massachusetts, in an action on a bond, the condition shall be deemed a part of the obligation, and shall be set forth in the declaration, and the breaches relied on shall be assigned.

Pub. Stats., Ch. 107, § 2.

And certain precedents are given in that chapter, which show that a special and exact assignment is required.

By the record, p. 5, it appears that "the only breach of the bond relied on was that set out in the declaration of the failure of Hill to account for all moneys received; and under this assignment of breach no claim was made that the said Hill had neglected to account for any other sums or moneys than those received by him in naturalization cases." Then follows the table of the amount so received in each year, and the statement that the maximum was only exceeded in 1884, as we have already shown, and then only by $517.07.

By Pub. Stats. (Mass.), Chap. 197, §§ 9 to 12,

in an action on a bond, if a breach is proved in any manner, judgment is entered for the penalty, but execution is awarded only for what is due according to equity and good conscience; and the judgment stands as security for further possible breaches. If such breaches occur, the plaintiff, or his executors or administrators, may have *scire facias*, and execution shall be awarded for the amount due for those breaches.

This statute, like the act of Congress, finds its original in the English Act 8 and 9 Wm. III., Chap. 11, § 18.

The only difference is that in the English and the Massachusetts statutes the bond is merged, and the judgment for the full penalty takes its place, so that the signature of the bond need not again be proved; while under the act of

Congress, the judgment is only for the damages, but is conclusive evidence that the bond was duly executed. Under either law, the amount recovered is what is due in equity in respect of the breaches.

All these statutes have the common purpose to give equitable powers to the courts of common law to enable them to do justice, and to save the obligor of a bond the necessity of bringing a bill in chancery to restrain an action for the full penalty. If it were not for these statutes, such a bill would lie in all cases of penalties and forfeitures, to ascertain the true amount of damages, and confine the recovery to that amount.

Story, Eq. Juris., §§ 1313 to 1317, and cases.

It is clear that under these statutes the amount in dispute is the amount due, according to equity and good conscience, which is all that the plaintiff can gain or the defendant can lose in such an action.

If there were doubt of this in any case, there can be none in this, where the defendants, in their answer, admit the due execution of the bond; and the plaintiffs admit that the breach is the not accounting for certain specified fees.

This court always looks beyond the forms of action and even behind the stipulations of the parties, to ascertain whether the amount actually in dispute is sufficient.

Brown v. *Shannon*, 20 How. 55.
Lee v. *Watson*, 1 Wall. 337.
Gray v. *Blanchard*, 97 U. S. 564.
Schaker v. *Hartford F. Ins. Co.*, 93 U. S. 241.

In our case, after verdict, the *ad damnum* was increased, by consent, from $2,000 to $20,000; but this will not help the jurisdiction.

Bowman v. *Chicago & N. W. R'y*, 115 U. S. 611.

That the judgment may be a precedent, or even a conclusive finding of facts and law which will bind the parties absolutely in future probable litigation of a value exceeding $5,000, is of no consequence, if the amount in dispute in the case itself does not exceed that sum.

Elgin v. *Marshall*, 106 U. S. 578.

Bruce v. *Manchester & Keene R. R.*, 117 U. S. 514.

It is hardly necessary to cite other cases, after the decision (never overruled or doubted) of

U. S. v. *McDowell*, 4 Cranch, 316.

In that case, the United States brought an action on an official bond of the marshal for a district in Kentucky, to recover the penalty of $20,000, and the breach assigned was for not paying $328; the judgment below was against the United States, and they bought a writ of error. The Court, without giving a formal opinion, dismissed the case for want of jurisdiction.

The head-note is: —

"In deciding whether the matter in dispute is sufficient to sustain the jurisdiction of this court, it will look to the sum due on the condition of the bond, and not to the penalty."

The law of Kentucky, under which the forms of proceeding in that case came, was like the statute of William III. and of Massachusetts, viz.: that judgment should be entered for the penalty, and should stand as security for future breaches.

The precise language of the statute was that "judgment shall be entered as heretofore has been usually done in such actions"; but the meaning is plain, for it proceeds afterwards in the same sentence: "And such judgment shall remain as security to the plaintiff, his executors and adminis-

trators, for any other breaches which may afterwards happen; and he or they may have a *scire facias* against the defendant, and may assign any other breach, and thereupon damages shall be assessed and execution issued as aforesaid."

Laws of Kentucky (Ed. 1799), Ch. 84, § 6, p. 218.
Toulmin's Acts of Kentucky, etc. (1802), p. 192.

Indeed, this appears by the brief statement of the reporter, "this was an action of debt for $20,000, the penalty of an official bond of the defendant, as marshal, etc."

Judge Curtis's head-note, in his edition of the Reports, is: "In deciding whether the matter in dispute be sufficient to sustain the jurisdiction of this court, it will look to the sum alleged by the obligee to be due upon the condition of the bond, and not to the penalty." This is the point decided, because judgment below was against the United States, and their allegation of the amount due for the breach was taken to be true.

The breach assigned in our case is for not accounting for certain fees, out of which, if he did account, there would be due from Mr. Hill to the United States, $517.07.

II.

The judgment below should be affirmed, because the case is governed by

U. S. v. *Hill*, 120 U. S. 169.

In trying to distinguish this case from that, the plaintiffs offered to prove that the practice in "nearly all" the districts had been to return naturalization fees, and that neither the Secretary of the Interior nor the Department of Justice had been acquainted with the practice in Massachusetts until 1884.

This offer was rightly rejected. The former action was decided upon a statement of facts which was absolutely true, and which showed upon its face that the custom relied on was a custom in Massachusetts.

Mr. Maury, in his argument before this court, pointed out this circumstance, and one of the justices remarked that the usage was the same in the district with which he was best acquainted.

As to "nearly all" the districts, it must be judicially known to the Court that the amount of this business in "nearly all" the districts is insignificant. If the offer had specified the three or four districts in which the great proportion of foreigners are naturalized, it might be of some significance.

Besides, the offer of proof does not contain any statement or suggestion that the services performed by the clerks in those unnamed districts ~~was~~ were at all like ~~that~~ those done in Massachusetts, which the Circuit Court decided in the former case not to be clerical in their nature.

U. S. v. *Hill*, 25 Fed. Rep. 375.

It was admitted by the plaintiffs that, notwithstanding the general statements in the offer of proof tending to show that the services were rendered by Mr. Hill, as clerk, they were services precisely like those involved in the former suit (p. 6).

It was inferred by the Circuit Court in the first case that the officers of the government having supervision of the accounting must have known of the custom of Mr. Hill and his predecessors. There was no statement of the sort in the agreed facts (p. 9). The only allusion to the subject is that Mr. Hill's accounts from the time of his appointment in 1879 to July, 1884, "have been examined and adjusted by the accounting officers of the Treasury Department."

The plaintiffs now offer to prove that "the omission of said Hill and his predecessor to make returns of and account for said fees was unknown to said Departments" (meaning the Interior and Justice) until 1884. If these departments were ignorant, it is a remarkable and not very creditable circumstance.

Nothing is said in the offer of proof about the Treasury Department, with whom the whole accounting was done for many years after the statute requiring returns was passed, and with whom is still the ultimate accounting.

We submit that nothing is shown in the offer of proof to distinguish this case from *U. S.* v. *Hill*, 120 U. S. 169.

JOHN LOWELL.